Supreme Court, U.S.
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No. 98-982

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

GLORIA J. THOMPKINS,

Petitioner,

vs.

QUINCY'S RESTAURANT, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF CIVIL APPEALS
OF THE STATE OF ALABAMA

RESPONDENT'S BRIEF IN OPPOSITION

ARMSTEAD LESTER HAYES III
Counsel of Record
MELTON, ESPY, WILLIAMS
& HAYES, P.C.
Attorneys for Respondent
Post Office Drawer 5130
Montgomery, Alabama 36103-5130
(334) 263-6621

150648

Counsel Press LLC
FORMERLY LUTZ APPELLATE SERVICES
(800) 274-3321 • (800) 359-6859

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QUESTIONS PRESENTED FOR REVIEW

1. Whether there is a federal question for review by the Supreme Court of the United States when no federal questions were raised by the Petitioner in any of the state court proceedings or in this Court?

2. Whether this Court has jurisdiction of a Petition for Writ of Certiorari averring that "the jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1245(1)?"

RULE 29.6 STATEMENT

The parent company of Respondent, Quincy's Restaurant, Inc. is Flagstar Enterprises, Inc. There are no nonwholly owned subsidiaries.

Respondent opposes the grant of certiorari in this case and requests that the Petition of Gloria J. Thompkins be denied.

STATEMENT OF JURISDICTION

Petitioner attempts to invoke the jurisdiction of this Court under a non-existent statute, i.e., 28 U.S.C. § 1245(1).

STATEMENT OF THE CASE

On October 23, 1995, Petitioner Gloria J. Thompkins (hereinafter "Petitioner") filed her Complaint in the Circuit Court of Bullock County, Alabama naming as the sole defendant Flagstar, Inc., d/b/a Quincy's Family Steakhouse. Petitioner's original Complaint contained four counts: negligence, res ipsa loquitur, breach of implied warranty of fitness for human consumption and violation of the Alabama Extended Manufacturer's Liability Doctrine (C 9-15). Flagstar, Inc. timely filed its Motion to Dismiss or in the Alternative Motion to Transfer the case to the Circuit Court of Montgomery County, Alabama. The Circuit Judge for Bullock County, Alabama granted the Motion to Transfer and entered an Order transferring the case to the Circuit Court for Montgomery County, Alabama. (C 5).

Flagstar, Inc. subsequently filed an Answer to Petitioner's Complaint, stating that it was incorrectly identified and providing its correct legal name as Quincy's Restaurant, Inc.[1] Petitioner subsequently filed an Amendment to her Complaint, a Third Amended Complaint and a Fourth Amended Complaint. (C 20-23; 76-79; 90-93). Quincy's timely filed its Answers to Petitioner's Amendments. (C 24-27; 141-142).

Discovery between the parties ensued and on April 24, 1997, Quincy's filed its Motion for Summary Judgment, supporting deposition testimony and its Memorandum Brief/Narrative Summary in support of its Motion for Summary Judgment.

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1. Respondent will hereafter be referred to as "Quincy's."

(C 143-229). Petitioner, in response thereto, filed Petitioner's Statement in Opposition to Quincy's Motion for Summary Judgment and Objection. (C 230-304). Quincy's Motion for Summary Judgment addressed each of Petitioner's seven claims contained in her Complaint and Amendments thereto. In her amended Complaint, Petitioner's claims consisted of seven counts: count one alleged negligence; count two was based upon the doctrine of res ipsa loquitur; count three was a claim for breach of implied warranty of fitness of human consumption; count four alleged violation of the Alabama Extended Manufacturer's Liability Doctrine; count five was a claim for wanton preparation of food; count six alleged wanton/negligent training and supervision of LaTonya Huffman, a yeast roll maker; and count seven was a claim for wanton/negligent training, supervision and retention of Raymond Moore, an employee of Quincy's. (C 211).

On May 12, 1997, the trial court entered an Order granting Quincy's Motion for Summary Judgment as to count five, wantonness. (C 305). The court subsequently entered an Amended Order granting Summary Judgment as to all of Petitioner's wantonness claims, count five (wanton preparation of food), count two (res ipsa loquitur) and counts six and seven (negligent/wanton training and supervision). In its Amended Order, the court noted that based upon Petitioner's representation to the court of her "voluntary dismissal of Counts six and seven, Summary Judgment is granted to defendant as to Counts six and seven." (C 306).

Petitioner subsequently filed a Motion to Dismiss defendant Flagstar, Inc. d/b/a Quincy's Family Steakhouse and the court entered an Order that said defendant and all claims against it were dismissed with prejudice. (C 332-333; 334). Accordingly, the only remaining defendant in the trial court was Quincy's Restaurant, Inc., which had been previously named as a party by Amendment. (C 20).

On September 3, 1997, the trial court entered a Joint Pre-Trial Order wherein Petitioner's Complaint, First Amended

Complaint, Third Amended Complaint and Fourth Amended Complaint were allowed along with Quincy's Answers thereto. (C 335-338). The case was then tried before a jury on September 22, 1997. At the close of the evidence, Quincy's made a Motion for Directed Verdict as to all of Petitioner's claims. (C 371-372). The trial court granted the Motion for Directed Verdict as to Petitioner's condition of irritable bowel syndrome based upon a lack of medical causation with regard to Petitioner's alleged ingestion of a foreign object. (R-302). Quincy's Motion was denied as to all other claims. The case then went to the jury on three theories: negligence, violation of the Alabama Extended Manufacturer's Liability Doctrine and breach of implied warranty. (R-319). The jury was charged by the trial court and after having deliberated, the jury returned a verdict in favor of Quincy's and against the Petitioner. (C-373). Petitioner thereafter appealed to the Alabama Court of Civil Appeals which affirmed the judgment of the trial court on April 24, 1998. Petitioner's Application for Rehearing was denied on June 12, 1998. Petitioner then filed a Petition for Writ of Certiorari to the Court of Civil Appeals of Alabama in the Alabama Supreme Court and such Petition was denied on October 16, 1998.

REASONS FOR DENYING THE WRIT

I.

NO FEDERAL ISSUES WERE RAISED IN THE STATE COURTS OR IN THIS COURT.

It clearly appears from the face of the Petition for Writ of Certiorari filed in this Court that Petitioner is attempting to have this Court reassess the evidence which led the trial court and jury to rule in favor of Quincy's. This case presents purely factual issues which were decided against the Petitioner by the trial court and jury. No federal issues are presented here by the Petitioner and indeed no federal issues were ever raised in the state courts, a jurisdictional prerequisite to their consideration in this Court.

Rule 14.1(g)(i) of this Court admonishes Petitioner seeking a review of state court judgments to identify "when the federal questions sought to be reviewed were raised" and "the method or manner of raising them and the way in which they were passed on by the state courts," with "pertinent quotations of specific portions of the record." The Petitioner has wholly failed to allege or identify any federal questions which were raised in the Montgomery Circuit Court, Alabama Court of Civil Appeals or Alabama Supreme Court. This is because no such assertion was ever made in any of the state courts.

II.

PETITIONER HAS FAILED TO ALLEGE ANY BASIS FOR JURISDICTION IN THIS COURT.

Rule 14.1(e)(iv) clearly provides that the statutory provision believed to confer on this Court jurisdiction to review on Writ of Certiorari the judgment or order in question should be concisely stated in a Petition for Writ of Certiorari. Here the Petition avers that "the jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1245(1)." There is no such statute as a basis for jurisdiction in this Court. For this additional reason, the Petition should be denied.

Rule 10 of this Court clearly sets forth the considerations and reasons upon which this Court relies in determining whether a Petition for a Writ of Certiorari should be granted. Those reasons include:

(a) decisions entered by a United States Court of Appeals which conflict with the decision of another United States Court of Appeals on the same matter

(b) a decision from a state court of last resort deciding an important federal question which conflicts with the decision of another state court of last resort or of a United States Court of Appeals

(c) decisions of a state court or a United States Court of Appeals which pertain to an important question of federal law that has not been but should be settled by this Honorable Court or which conflicts with relevant decisions of this Honorable Court.

None of such reasons are remotely applicable in the case at bar. Rule 10 also provides that a Petition for Writ of Certiorari will be granted only for compelling reasons and such a Petition is **rarely** granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. Here the Petition is merely attempting to challenge the factual findings of the trial court and jury which both ruled against her and no federal questions are involved.

The questions presented in Petitioner's Petition for Writ of Certiorari simply do not meet or in any way fall within the Rule 10 criteria.

CONCLUSION

For the reasons given above, the Petition is due to be denied.

Respectfully submitted,

ARMSTEAD LESTER HAYES III
Counsel of Record
MELTON, ESPY, WILLIAMS
& HAYES, P.C.
Attorneys for Respondent
Post Office Drawer 5130
Montgomery, Alabama 36103-5130
(334) 263-6621